to be exercised through its own courts. Neither the common law, nor general principles of justice, give a private person the right to punish except in certain limited cases, such as that of parent and child, or schoolmaster and pupil; so the right, when given, should be strictly construed and limited closely to the purpose intended by the statute. It is submitted, therefore, that any statute imposing upon a defendant a penalty which is not recompense for damage he has caused is a penal statute not properly enforceable in a foreign state.[9]

RECENT CASES.

AGENCY — AGENT'S LIABILITY TO THIRD PARTIES — WHETHER LIABLE FOR NONFEASANCE. — The defendant, an agent of a telephone company, was charged with the duty of inspecting and repairing its poles. As a result of his negligence in discharging these duties a pole fell and injured the plaintiff. *Held*, that the plaintiff may recover. *Murray* v. *Cowherd*, 148 Ky. 591, 147 S. W. 6.

The court refuses to follow the usual distinction between misfeasance and nonfeasance, and maintains that in each case the agent is guilty of a breach of duty to a third person. There is a principle in criminal law that the failure to perform a legal duty, such as that of an agent to his master, has the legal effect of an act, and if injury results therefrom the agent may be liable. *Regina* v. *Lowe*, 3 C. & K. 123. There, however, the question is merely one of punishing a wrongful act causing an injury. In torts a duty to the plaintiff is also necessary. It is a well-settled rule that there is no duty to act affirmatively unless the parties are in some peculiar relationship. See *Sweeney* v. *Old Colony, etc. R. Co.*, 10 Allen (Mass.) 368. A man need only be careful that the forces he sets in motion do not injure anyone. *Delaney* v. *Rochereau*, 34 La. Ann. 1123. The Kentucky court seems to regard the breach of any duty as equivalent to a breach of duty to the plaintiff. See *Drake* v. *Hagan*, 108 Tenn. 265, 67 S. W. 470. If this doctrine is carried to its logical conclusion a failure to perform any contract might subject a man to a multitude of tort actions.

BANKRUPTCY — DISCHARGE — EFFECT ON ASSIGNMENT OF EXPECTANCY. — An heir apparent assigned his bare expectancy as security for a loan. Later he was discharged in bankruptcy. Thereafter, upon the death of his ancestor, he succeeded to a share of her estate. *Held*, that equity will enforce the assignment. *Bridge* v. *Kedon*, 126 Pac. 149 (Cal.).

At common law an expectation of acquiring property was not recognized as a subject of transfer. *Lunn* v. *Thornton*, 1 C. B. 379; *Wheeler's Executors* v. *Wheeler*, 2 Metc. (Ky.) 474. But see *Buddle* v. *Green*, 27 L. J. Ex. 33, 34; *Jones* v. *Webster*, 48 Ala. 109, 112. Equity, however, will enforce the assignment of an heir's expectancy when fair to do so. *Hobson* v. *Trevor*, 2 P. Wms. 191; *Clendening* v. *Wyatt*, 54 Kan. 523. *Contra*, *McCall* v. *Hampton*, 98 Ky. 166. On one view, it operates as a present equitable transfer of the expectancy. See 3 POMEROY, EQUITY JURISPRUDENCE, §§ 1271, 1288. By the better view, equity simply enforces a contractual duty to convey the property providing it is acquired. *Carleton* v. *Leighton*, 3 Meriv. 667. See *Taylor* v. *Swafford*, 122 Tenn. 303, 307–312, 123 S. W. 350, 351–352. Clearly the substantial

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[9] See MINOR, CONFLICT OF LAWS, § 10, pp. 23, 24. *Cf.* Pickering *v.* Fisk, 6 Vt. 102; Blaine *v.* Curtis, 59 Vt. 120, 7 Atl. 708; Indiana *v.* John, 5 Ham. (Ohio) 217.

elements of a contract are necessary. *Estate of Lennig*, 182 Pa. 485, 38 Atl. 466. Since equitable jurisdiction over contracts is concurrent, it seems desirable to follow legal analogy instead of creating a new property interest in order to make possible a present equitable transfer. Indeed, it is well established that an expectancy does not pass to a bankrupt's trustee. *Moth* v. *Frome*, 1 Ambl. 394; *In re Inkson's Trusts*, 21 Beav. 310. By a third view, the assignment may be treated as a grant of power to receive the after-acquired property. See WILLISTON, SALES, § 132. Such power would survive the discharge in bankruptcy. *Hayes* v. *Pike*, 17 N. H. 564; *Stedman* v. *Gassett*, 18 Vt. 346. In the principal case the court adopted the first theory. The right of the assignee of the expectancy after the assignor's bankruptcy would also be protected even though the assignment is regarded as merely an executory contract. For a discharge in bankruptcy does not extinguish a debt. *Fletcher* v. *Neally*, 20 N. H. 464; *Champion* v. *Buckingham*, 165 Mass. 76, 42 N. E. 498. Consequently it does not prevent the enforcement of a security. *Moody* v. *Webster*, 20 Mass. 424; *Paxton* v. *Scott*, 66 Neb. 385, 92 N. W. 611. Likewise it should not impair an agreement for security, which is otherwise valid and not dischargeable in itself. *Mallin* v. *Wenham*, 209 Ill. 252, 70 N. E. 564; *Citizens' Loan Association* v. *Boston & Maine R. Co.*, 196 Mass. 528, 82 N. E. 696. *Contra*, *In re West*, 128 Fed. 205; *In re Home Discount Company*, 147 Fed. 538. Apart from the debt, the contract liability, being subject to a condition precedent, was not even provable. BANKRUPTCY ACT OF 1898, § 63; *In re Ellis*, 143 Fed. 103. Only provable claims are discharged. BANKRUPTCY ACT OF 1898, § 17. Furthermore, it is not the policy of the Bankruptcy Act to affect a specific duty of the debtor, particularly when that duty serves as a security. See BANKRUPTCY ACT OF 1898, §§ 17, 63, 67 d.

CONFLICT OF LAWS — RECOGNITION OF FOREIGN PENAL LAWS. — A statute in Colorado provided that the directors of a corporation should be liable for the debts of the corporation, if they failed to file a report of its condition. *Held*, that the liability created by the statute will be enforced in Kansas. *The Great Western Machine Co.* v. *Smith*, 124 Pac. 414 (Kan.). See NOTES, p. 172.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — CRUEL PUNISHMENT. — A Washington statute provided that in cases of conviction for statutory rape and certain other crimes the court might direct that an operation be performed for the prevention of procreation. In pursuance of this provision the trial judge ordered that the operation known as vasectomy be performed on the defendant. The state constitution forbade the infliction of cruel punishments. *Held*, that the operation is not a cruel punishment. *State* v. *Feilen*, 126 Pac. 75 (Wash.). See NOTES, p. 163.

CORPORATIONS — TORTS — LIABILITY FOR AGENT'S SLANDER. — A department manager acting in the course and scope of his employment publicly accused an employee of stealing. No specific authorization or ratification was shown. *Held*, that the corporation is not liable. *Steward Dry Goods Co.* v. *Heuchtker*, 146 S. W. 423 (Ky.).

Salesmen of the defendant corporation acting in the course and scope of their employment injured the plaintiff's business by stating that his oil would not meet statutory tests, and that he and his customers could be indicted for selling it. There was no specific authorization or ratification. *Held*, that the corporation is liable. *Waters-Pierce Oil Co.* v. *Bridwell*, 147 S. W. 64 (Ark.).

Early decisions held that a corporation was not liable for its agents' libel or slander. *Childs* v. *Bank of Missouri*, 17 Mo. 213. But these decisions